

§ 3.329

38 CFR Ch. I (7–1–02 Edition)

of the decision rendered on the primary issue by the agency of original jurisdiction.

(d) *Notification.* The Compensation and Pension Service shall notify the claimant when the request for an independent medical opinion has been approved with regard to his or her claim and shall furnish the claimant with a copy of the opinion when it is received. If, in the judgment of the Secretary, disclosure of the independent medical opinion would be harmful to the physical or mental health of the claimant, disclosure shall be subject to the special procedures set forth in § 1.577 of this chapter.

(Authority: 38 U.S.C. 5109, 5701(b)(1); 5 U.S.C. 552a(f)(3))

[55 FR 18602, May 3, 1990]

§ 3.329 [Reserved]

§ 3.330 Resumption of rating when veteran subsequently reports for Department of Veterans Affairs examination.

Such ratings will be governed by the provisions of § 3.158, “Abandoned Claims,” and § 3.655, “Failure to report for Department of Veterans Affairs examination.” The period following the termination or reduction for which benefits are precluded by the cited regulations will be stated in the rating. If the evidence is insufficient to evaluate disability during any period following the termination or reduction for which payments are not otherwise precluded, the rating will contain a notation reading “Evidence insufficient to evaluate from _____ to _____.”

[29 FR 3623, Mar. 21, 1964]

CROSS REFERENCE: Failure to report for Department of Veterans Affairs examination. See § 3.655.

§§ 3.331–3.339 [Reserved]

§ 3.340 Total and permanent total ratings and unemployability.

(a) *Total disability ratings—(1) General.* Total disability will be considered to exist when there is present any impairment of mind or body which is sufficient to render it impossible for the average person to follow a substantially

gainful occupation. Total disability may or may not be permanent. Total ratings will not be assigned, generally, for temporary exacerbations or acute infectious diseases except where specifically prescribed by the schedule.

(2) *Schedule for rating disabilities.* Total ratings are authorized for any disability or combination of disabilities for which the Schedule for Rating Disabilities prescribes a 100 percent evaluation or, with less disability, where the requirements of paragraph 16, page 5 of the rating schedule are present or where, in pension cases, the requirements of paragraph 17, page 5 of the schedule are met.

(3) *Ratings of total disability on history.* In the case of disabilities which have undergone some recent improvement, a rating of total disability may be made, provided:

(i) That the disability must in the past have been of sufficient severity to warrant a total disability rating;

(ii) That it must have required extended, continuous, or intermittent hospitalization, or have produced total industrial incapacity for at least 1 year, or be subject to recurring, severe, frequent, or prolonged exacerbations; and

(iii) That it must be the opinion of the rating agency that despite the recent improvement of the physical condition, the veteran will be unable to effect an adjustment into a substantially gainful occupation. Due consideration will be given to the frequency and duration of totally incapacitating exacerbations since incurrence of the original disease or injury, and to periods of hospitalization for treatment in determining whether the average person could have reestablished himself or herself in a substantially gainful occupation.

(b) *Permanent total disability.* Permanence of total disability will be taken to exist when such impairment is reasonably certain to continue throughout the life of the disabled person. The permanent loss or loss of use of both hands, or of both feet, or of one hand and one foot, or of the sight of both